

The Commission also should make clear that preemption extends to any statute which guarantees access to MDUs by MVPDs, regardless of whether MVPD service is offered alone or in conjunction with telephone service and regardless of the number of wires used. This will address some of the issues raised in ¶ 63 of the NPRM.

The statutes which give common carriers access to MDUs for telephone service could also guarantee those same carriers access for MVPD service. In New Jersey, for example, the telephone company is authorized to install "its lines ... over any land, subject to the right of their owners thereof to full compensation...." N.J.S.A. 48:17-8. New York has a similar law.^{31/} These statutes suggest telephone companies have an MDU access right for "lines" that carry telephone and cable service.

Preemption of discriminatory MDU access for broadband service should extend to these common carrier condemnation statutes. The states can then decide the extent to which cable and other broadband services can be "piggybacked" on top of telephone service in MDUs (and vice versa), subject to the predominant federal concern that all providers be treated equally and MDU access not be used as a pretext for state control of or favoritism in market entry by broadband service providers.

^{31/} N.Y. Transp. Corp. Law § 27.

III. COMPENSATION FOR WIRING

The Commission's existing rules prescribe a per-foot replacement cost for cable inside wiring based on the length of the wire on the customer side of the demarcation point multiplied by the value of the wire itself (which is usually a few cents per foot).^{32/} The NPRM asks whether the current inside wiring compensation rules should be modified if the demarcation point is moved to some point farther than twelve inches from the subscriber's premises.^{33/} Liberty believes that the existing cable compensation rules do not need to be modified if the location of the demarcation point is moved since cable operators would be equitably compensated under the existing regulatory scheme regardless of the wire length.

IV. SIGNAL LEAKAGE

The NPRM asks for comment on the best method of extending the signal leakage limits (that currently apply only to traditional cable operators) to others who provide service over broadband facilities.^{34/} The Commission is also interested in understanding how any change in the location of the cable demarcation point will affect signal leakage.

^{32/} 47 C.F.R. § 76.802(a).

^{33/} NPRM ¶ 51.

^{34/} NPRM ¶ 24.

Liberty does not oppose extending the Commission's existing signal leakage rules^{35/} to other MVPDs. As a practical matter, Liberty already complies with these rules. Maintaining system integrity is critical for MVPDs to attract and retain subscribers in a competitive environment. If there is signal leakage, the signal quality suffers and subscribers will complain. If the problem persists, subscribers will turn to other MVPDs (if there are any) for video services.

If the Commission moves the cable demarcation point as Liberty proposes, there should be no adverse effect on signal leakage. In fact, Liberty's proposed demarcation point should minimize the risk of signal leakage and, when there is signal leakage, facilitate its detection. Signal leakage occurs when there is a defective piece of cable in the wiring system, an improperly fitted connection, or a bad splice attachment. With good maintenance and conscientious system monitoring, signal leakage can be detected early and corrected. Under Liberty's proposal, when a technician effectuates a switch-over from one MVPD to another, the technician: (i) disconnects the subscriber's dedicated line from the incumbent operator's common line; (ii) connects that wire to the new service provider's common line; and, (iii) installs a "locking terminator" -- a cylinder about 3/4" in diameter and 2" long -- on the equipment that was connected to the inside wiring. By moving the demarcation point to a location that is more accessible to technicians and

^{35/} 47 C.F.R. §76.611.

which does not require the splicing of existing wires when a subscriber switches MVPDs, potential signal leakage should be reduced.

V. CONCLUSION


In an effort to promote competition in the video and telecommunications marketplace, the Commission should adopt rules that allow MDU residents to choose from among a multitude of MVPDs. To accomplish this goal, the Commission should modify its existing cable demarcation point and preempt state mandatory access laws which discriminate against non-franchised MVPDs.

Respectfully submitted,

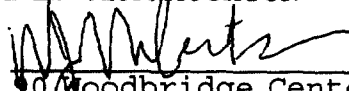
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Table 1

1990 HOUSING DATA FOR U.S. AND MAJOR U.S. CITIES*

	Single Family Dwellings		Multiple Dwelling Units	
	Number of Units	Percentage of Total Units	Number of Units	Percentage of Total Units
Total U.S.	71,114,768	63 %	31,442,462	28 %
Boston	39,124	16 %	208,687	83 %
Chicago	295,507	26 %	824,408	73 %
Dallas	222,859	48 %	232,872	50 %
Detroit	270,279	66 %	132,224	32 %
Los Angeles	586,284	45 %	691,117	53 %
New York	428,680	14 %	2,512,561	84 %
Philadelphia	455,499	67 %	212,926	32 %
San Francisco	104,287	32 %	217,524	66 %
Seattle	131,983	53 %	113,567	46 %
Washington, D.C.	105,899	38 %	169,973	61 %

* Source: Bureau of the Census

Table 2

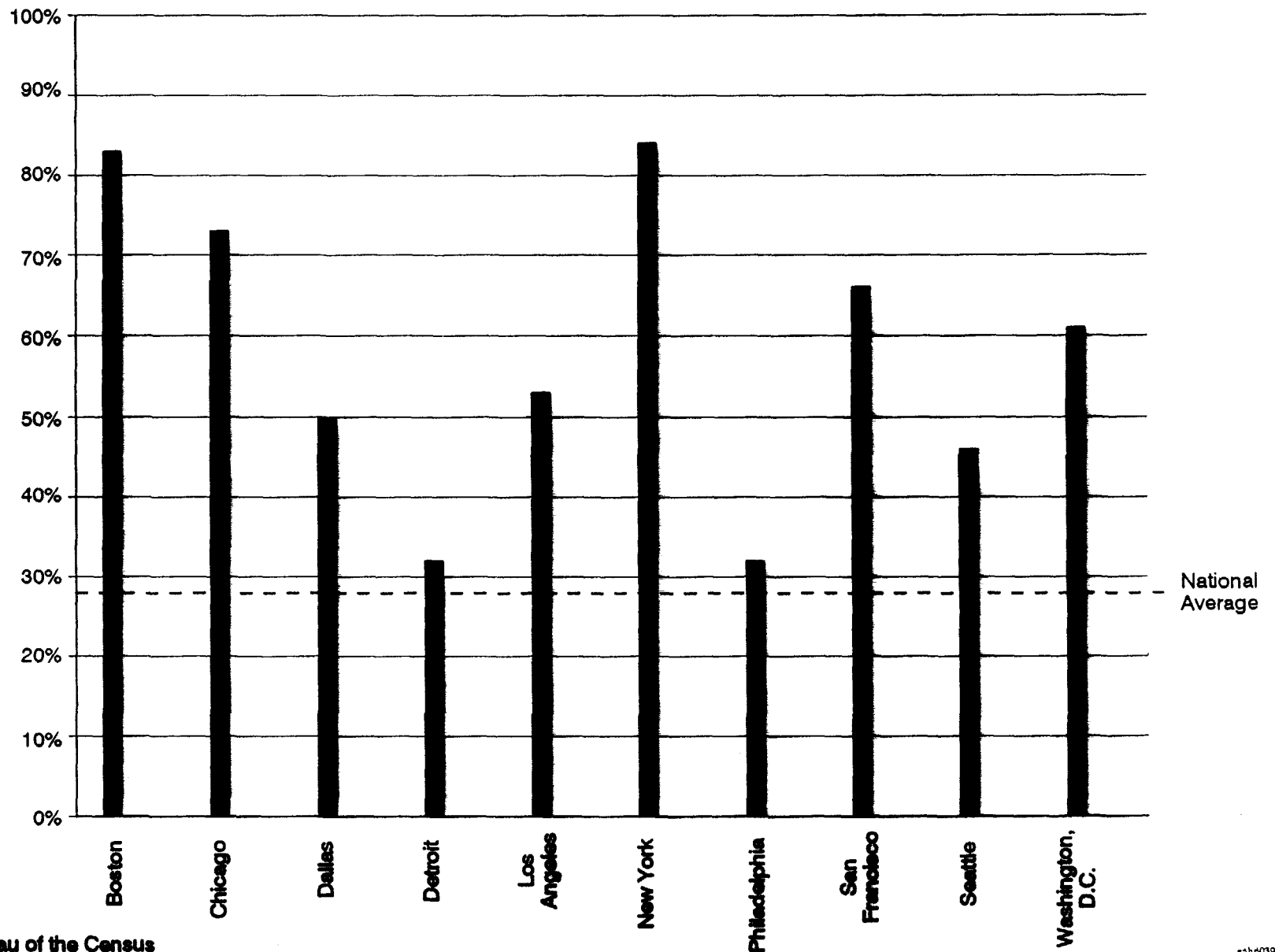
U.S. POPULATION DATA FOR 1980 AND 1990*

	1980	1990	Growth (Absolute)	Growth (Percentage)
Multiple Dwelling Units ^{1/}	20,704,002	31,442,462	10,738,460	51%
Single Family Dwellings	61,666,251	71,114,768	9,448,517	15%
Households	80,389,673	91,947,410	11,557,737	14%
Families	59,190,133	64,517,947	5,327,814	9%
Individuals	226,645,805	248,709,873	22,164,068	9%

* Source: Bureau of the Census

^{1/} This classification refers to the total number of individual dwelling units within all MDUs in the United States.

Figure 1
Percentage of Total Housing Units
Contained Within MDU Buildings*



* Source: Bureau of the Census

Figure 2

U.S. POPULATION GROWTH BETWEEN 1980 AND 1990*



* Source: Bureau of the Census